IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4575 OF 1996

Shailesh U. Kamdar (H.U.F.). ... Plaintiff.

V/s.

Vijay Ghai Sashikant Khara. ... Defendant.

....

Ms. Nadia Bhatia i/b. Mr. Prem S. Gidwani for the Plaintiff.
None for the Defendant.

CORAM : DR.D.Y. CHANDRACHUD J.

13TH JULY 2007.

P.C. :

. Both the Plaintiffs and the Defendants carry on business in steel. In pursuance of the order placed by the Plaintiff, the Defendant supplied goods of a value of Rs.10,02,540/- under four invoices dated 8th November 1993. The Defendant drew four bills of exchange on the Plaintiff in favour of the Central Bank of India. The bills of exchange were accepted by the Plaintiff. The case of the Plaintiff is that the Plaintiff paid to the Defendant the amount due under the four bills on the assurance of the Defendant that he in turn would discharge the

dues of the Central Bank. The Plaintiff relies on the statement contained in the books of account maintained by the Plaintiff which shows that nothing is due and payable to the Defendant. The Central Bank of India instituted a suit against the Plaintiff in which leave to defend was granted to the Plaintiff herein subject to a condition of deposit. The Plaintiff having failed to comply with the condition of deposit, a decree was passed on 13th September 1997. The Plaintiff has accordingly sued the Defendant for the recovery of a principal amount of Rs.10,02,540/-, for damages quantified at Rs.50,000/- and for interest at 18% per annum.

2. The Defendant has not entered appearance despite service of writ of summons. The averments contained in the plaint have therefore gone unchallenged. The Plaintiff has filed an affidavit in lieu of examination in chief and a compilation of the original documents. At pages 5 and 6 of the compilation, the Plaintiff has annexed copies of the ledger account pertaining to the Defendant which has been confirmed by the Defendant, reflecting that no amount is due and payable to the Defendant.

3. In so far as the claim for damages is concerned, it has not been duly substantiated and is not pressed.

4. In the absence of any defence, the claim of the Plaintiff will have to be allowed on the basis of evidence on record.

5. The suit shall accordingly stand decreed in the principal amount of Rs.10,02,540/-. The Plaintiff would be entitled to interest thereon from the date of the institution of the suit until payment or realisation at the rate of 9% per annum together with the costs of the suit.